IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2767 OF 2005

1. Wali Mohammed (Prop.M/s.A.M.Steel) ..Petitioner
Versus
1.Mogaveera Coop. Bank Ltd. and Ors. ..Respondents

Mr.Vinod Singh with Pratap Sampat for petitioner
Mr.K.B.Adyanthaya for respondent no.1
Ms I. Calcuttawala, AGP for respondent nos.2 to 4

CORAM : P.V.KAKADE, J.

DATE : 21ST DECEMBER, 2005

P.C.:

1. Heard the learned counsel for all the parties.

2. Rule, rule made returnable forthwith by consent.

3. The Petitioner has challenged the recovery certificate dated 28.12.2005, notice of demand dated 17.6.2005 and notice before attachment dated 9.8.2005 issued by respondent no.2.

4. The factual matrix involved in the dispute is that the respondent no.1 Bank permitted overdraft

facility of Rs.4.5 lakhs to the petitioner for his Steel Trading business for working capital and expansion purpose which account was operated regularly. The respondent no.1 bank established TOD account of Rs.5 lacs. The said account was operated at the behest of respondent no.1 bank in the name of the petitioner. The petitioner did not received benefit from the account nor any documents were executed. The TOD account had outstanding balance exceeding Rs.33 lacs by August 2004. The case of the petitioner is that he was not responsible for the debits made to that account by respondent no.2.

5. The respondent no.1 filed two Recovery Applications before the Respondent no.2 being Case No.4945 of 2004 and Case No.4955 of 2004 pertaining to the said amount under Section 101 of the MCS Act, 1960. Both the applications involved same cause of action and factual background. Summonses were issued in both the cases by respondent no.2 fixing the date for hearing and respondent no. 2 disposed of Case No.4945 of 2004 on the date of very first hearing without giving any opportunity to make pleadings and on 28.12.2004 issued Recovery Certificate to the extent of Rs.5,57,551/=.

The respondent no.2 fixed hearing date in the case No.4955 of 2004 which was based on similar cause of action and facts and detailed pleadings were made in the case. Finally the respondent no.2 rejected the application in the case No.4955 of 2004 in a reasoned order, mainly on the ground of non supporting documents and evidence. It is the case of the petitioner therefore the ratio of the decision of rejection of the said case applies to mutatis mutandis to the case No.4945 of 2004 which was earlier allowed in favour of the respondent no.1 but which was decided without opportunity of any pleadings by the petitioner on the very first date. Hence the petition.

6. On perusal of the record it is apparent vide Exh.C - Roznama that the allegations made by the petitioner appears to be correct in the sense that the Case No.4945 of 2004 came to be decided on the very first hearing without giving opportunity to the petitioner to make pleadings as against Case No.4955 of 2004 which was based on similar facts and other aspects.

7. In view of this position, I have no doubt whatsoever that the order passed by the respondent no.2

issued recovery certificate under Sec.101 of MCS Act appears to be erroneous and therefore, have to be set aside with direction to remand the matter for hearing afresh so far as Case No.4945 of 2004 is concerned. Hence, further without elaboration, it is hereby directed that the petition is allowed to the extent that the recovery certificate issued under Sec.101 of MCS Act in case No.4945 of 2004 issued by the concerned respondent is hereby set aside and the matter is remanded back to the respondent no.2 for hearing afresh after giving opportunity to the petitioner in this regard. The matter to be adjudicated by respondent no.2 within a period of eight weeks from the date of receipt of Writ of this court. With this direction the petition stands disposed of with no order as to costs.